

WJCIA Annual Training Conference

Pupil Discipline in Wisconsin

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Stevens Point

Presented By:

Atty. Frank J. Crisafi

“...in the earliest public schools, teachers taught and students listened. Teachers commanded and students obeyed. Teachers did not rely solely on the power of ideas to persuade; they relied on discipline to maintain order.”

Morse v. Frederick 551 U.S. _____ (2007)
Justice Thomas Concurring Opinion

I. General Legal Parameters

A. Wis. Stats. 118.001

“The statutory duties and powers of school boards shall be broadly construed to authorize any school board action that is within the comprehensive meaning of the terms of the duties and powers, if the action is not prohibited by the laws of the federal government or of this state.”

B. Wis. Stats. 120.13

School boards may “make rules for the organization, graduation and government of the schools of the school district, including rules pertaining to conduct and dress of pupils in order to maintain good decorum and a favorable academic atmosphere.”

C. Wis. Stats. 120.13(1)(a) – Code of Classroom Conduct

II. Suspension s.120.13(1)(b) – copy attached

A. Grounds for suspension

- 1. Non-compliance with school rules;**
- 2. Knowingly conveying any threat or false information regarding attempts made to destroy school property by means of explosives;**
- 3. Conduct while at school or while under the supervision of a school authority which endangers the property, health or safety of others;**
- 4. Conduct while not at school or while not under the supervision of a school authority, which endangers the property, health or safety of others at school or under the supervision of a school authority.**
- 5. Conduct while not at school or while not under the supervision of a school authority, which endangers the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled.**
- 6. Possession of a firearm while at school or while under the supervision of a school authority.**
- 7. Threats to health, safety or property.**

B. Due Process in Suspension Proceedings

- 1. *Pupil Notice:* prior to any suspension, the district must advise the pupil of the reason for the proposed suspension and give the pupil the opportunity to explain his/her version of the incident.**
- 2. Suspension must be “reasonably justified” and based on an investigation that finds the pupil is guilty of the conduct alleged.**
- 3. *Parent Notice:* parent/guardian of a suspended minor pupil must be given notice of the suspension and the reason for the suspension.**

4. **Appeal:** within five (5) days following the commencement of the suspension the suspended pupil or the parent/ guardian may have a conference with the school district administrator or the designee (who shall be someone other than a principal, administrator, or teacher in the suspended pupil's school).

If the school district administrator / designee finds that:

- i. the pupil was suspended unfairly or unjustly; or
- ii. the suspension was inappropriate given the nature of the alleged offense; or
- iii. the pupil suffered undue consequences or penalties as a result of the suspension.

Reference to the suspension on the pupil's school record shall be expunged.

5. Appeal of a suspension to DPI is not provided for under state law.
6. Judicial review is not specifically provided for under state law.
7. A suspended pupil shall not be denied the opportunity to take any quarterly, semester, or grading period exams or to complete any course work missed during the suspension.

C. Length of Suspension

1. **Regular Education Students:** A school district may suspend a student for up to five (5) school days. If, however, the district sends a notice of expulsion hearing to the student, the district may suspend the student for up to fifteen (15) consecutive school days.
2. **Special Education Students:** A school district may not suspend a child with a disability for longer than ten (10) cumulative school days without services in any given school year. After the first ten (10) school days in one school year, the district must provide services developed pursuant to IDEA procedural requirements.

III. Expulsion - s.120.13(1)(c) – copy attached

A. Grounds for expulsion

- 1. Repeated refusal or neglect to obey the rules established by the school district;**
- 2. Engaging in conduct while at school or while under the supervision of a school authority which has endangered the property, health and safety of others;**
- 3. Engaging in conduct while not at school or while not under the supervision of a school authority which endangered the property, health or safety of others at school or under the supervision of a school authority, or endangered the property, health or safety of any employee or school board member of the school district in which the pupil is enrolled;**
- 4. Knowingly conveying or causing to be conveyed any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy any school property by means of explosives;**
- 5. Possessing a firearm, as defined in 18 U.S.C. §921(a)(3), while at school or while under the supervision of a school authority. Note: Unless the school board makes an exception, the minimum period of expulsion for this offense is not less than one year;**
- 6. If the student is at least 16 years old, and has repeatedly engaged in conduct while at school or while under the supervision of a school authority that has disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority and that such conduct does not otherwise constitute grounds for expulsion; or**
- 7. Threatening health, safety or property.**

“Conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property.” Wis. Stats. 120.13(1)(c)

****Must also find that the best interest of the school demands the pupil’s expulsion****

B. Due Process in Expulsion Proceedings

- 1. The pupil must be provided with a hearing**
- 2. Prior to the hearing the minor pupil and parent/guardian must be provided with written notice of the expulsion hearing**
 - > Notice must be sent five (5) days prior to the date of the hearing.**
 - > Notice must be specific and particularize the pupil's alleged conduct.**
- 3. At the hearing, both the pupil and school administration are entitled to present evidence and testimony and to cross examine and rebut evidence presented by the other side.**
 - > Strict rules of evidence do not apply.**
- 4. The board must issue its decision in the form of a written order. The order must be sent to the pupil and the parent/guardian if the pupil is a minor.**
- 5. A school board may adopt a resolution authorizing an independent hearing panel or an independent hearing examiner to determine a pupil's expulsion from school. The due process considerations are the same.**

C. Early Reinstatement – s. 120.13(1)(h)

- > Board may impose conditions on an expelled pupil before the pupil may apply for early reinstatement.**
- > Board may impose conditions on an expelled pupil after the District reinstates the pupil early, but before the term of the pupil's expulsion expires.**
- > Early reinstatement can be revoked without any board proceedings**

D. Appeal

An expelled pupil or the parent/guardian can appeal an expulsion order to the State Superintendent of Public Instruction. There is no time limit to file this appeal

- > The decision of the State Superintendent can be appealed to the Circuit Court within thirty (30) days.**

E. Options for an Expelled Pupil

- > Alternative educational services – There is no requirement that a school district provide a non-special education pupil with services.**
- > Admission to another school district – s.120.13(1)(f) does not require a district to admit a pupil under an expulsion order.**
- > Private schools.**
- > Home Schooling**

F. Wisconsin law does not limit the duration of an expulsion

- > A special education pupil who is expelled must continue to receive educational services**

G. Resources

- > Department of Public Instruction – www.dpi.state.wi.us**
- > Wisconsin Expulsion Digest (Wisconsin Association of School Boards) (608) 257-2622**

H. Other considerations in school discipline procedures (copies of statutes attached)

- 1. Privileged communications – s.118.126**
- 2. Corporal punishment – s.118.31**
- 3. Strip search by school employee – s.118.32**
- 4. Locker searches – s.118.325**
- 5. Tests for alcohol – s.118.45**

I. Emerging Areas in School Discipline

- 1. myspace.com**
- 2. facebook.com**
- 3. Search of pupil's computer and camera phone**
- 4. On line student expression**
- 5. Cyberbullying**

J. Summary

